

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File Number: EB-06-LA-346
AMERI-KING Corporation)	
)	NAL/Acct. No.: 200732900009
Huntington Beach, CA)	FRN: 0016212938
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2008

Released: December 19, 2008

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹ and Section 1.106 of the Commission’s rules,² we dismiss as untimely a Petition for Reconsideration (“*Petition*”) filed on July 25, 2008, by AMERI-KING Corporation (“AMERI-KING”), in Huntington Beach, California. AMERI-KING seeks reconsideration of a *Memorandum Opinion and Order*,³ issued by the Enforcement Bureau, which upheld an eight thousand dollar (\$8,000) monetary forfeiture penalty against AMERI-KING for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).⁴ As discussed below, we dismiss AMERI-KING’s *Petition* because it does not comply with the Act and the Rules, and is therefore procedurally defective. We also find that even if AMERI-KING had timely filed its *Petition*, the *Petition* would fail on the merits.

II. BACKGROUND

2. On December 22, 2006, the Enforcement Bureau’s Los Angeles Office received a request for assistance from the Air Force Rescue Coordination Center (“AFRCC”) regarding interference to the 406 MHz Search and Rescue Satellite (“SARSAT”) System. Investigation by the Los Angeles Office revealed that the interference was caused by the activation of an unregistered, emergency locator transmitter (“ELT”) by AMERI-KING Corporation at an open field testing laboratory near Mission Viejo, California.⁵ After the ELT was turned off, a Los Angeles agent admonished personnel from AMERI-KING and the testing laboratory working with AMERI-KING that ELTs tested in the United States must be operated in accordance with the Commission’s Rules.

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ *AMERI-KING Corporation*, 23 FCC Rcd 9916 (EB 2008) (“2008 Memorandum Opinion and Order”).

⁴ 47 U.S.C. § 301. See *AMERI-KING Corporation*, 23 FCC Rcd 2616 (EB 2008) (“*Forfeiture Order*”).

⁵ ELTs operating on 406.0 – 406.1 MHz must be registered with the National Oceanographic and Atmospheric Administration (“NOAA”). See 47 C.F.R. § 87.199.

3. On December 26, 2006, a Los Angeles agent contacted, via a three-way conference call, the manager of the testing laboratory, and a representative from AMERI-KING and explained that the Commission's rules had no provisions for open air operation of an ELT on 406.025 MHz.⁶

4. On December 28, 2006, the Los Angeles Office again responded to a request from AFRCC to locate and secure an unregistered ELT which was interfering with the SARSAT system on 406.025 MHz (hereinafter 406 MHz). This investigation revealed that AMERI-KING was testing a second ELT at a different testing laboratory, without the protection of a radio frequency shielded enclosure even though the operations manual for the ELT testing apparatus warned that operation without a shielded enclosure could cause a false distress alert.

5. On March 1, 2007, the Los Angeles Office sent a Letter of Inquiry ("LOI") to AMERI-KING regarding its activation of ELTs in December of 2006 and asking AMERI-KING how it complied with the Commission's Rules when testing ELTs. In its response to the LOI, AMERI-KING stated that the ELT in question is model AK-450, with an FCC identifier of L79AK-450. AMERI-KING stated that this model was certified by the FCC on July 24, 1995, as a licensed non-broadcast station transmitter. AMERI-KING further stated that it is in the process of upgrading model AK-450 from 121.5/243 MHz to 121.5/243/406 MHz. AMERI-KING also stated that it had applied for an aircraft radio station license in 1995 but that the application was returned because it was not required. AMERI-KING further stated that it applied for an experimental radio service license with the Commission on January 15, 2007. AMERI-KING also stated its tests had not been coordinated with the National Oceanographic and Atmospheric Administration ("NOAA") because the test purpose was not a satellite qualitative test, and that its ELT terminated into a beacon tester, which is a "50 ohms dummy load." AMERI-KING also acknowledged that all future testing in an open field had been disapproved by NOAA, until AMERI-KING's ELT is fully COSPAS-SARSAT type approved. AMERI-KING's response also included copies of a packing slip and invoice dated January 5, 2007 for a radio frequency shielded enclosure, and a statement that all future testing of ELTs will be conducted inside the shielded chamber.

6. On May 23, 2007, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to AMERI-KING.⁷ In the *NAL*, the Los Angeles Office found that AMERI-KING apparently willfully and repeatedly violated Section 301 of the Act by operating a radio transmitter without a license. AMERI-KING filed a response to the *NAL* on June 25, 2007 ("*Response*") and then filed a supplement to that response on July 5, 2007. In the *Response* and supplement, AMERI-KING argued that it did not willfully violate Section 301, that it did not repeatedly violate Section 301, that it had taken remedial measures to ensure future compliance, and that it had a history of compliance with the Commission's Rules.

7. In the *Forfeiture Order*, the Region determined, pursuant to Section 312(f)(1) of the Act,⁸ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, that AMERI-KING's violations were willful because AMERI-KING tested an ELT, which created emissions on 406 MHz, in an open field, in violation of the Commission's Rules,⁹ was warned about its violation,

⁶ See 47 C.F.R. § 87.197 (ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load) and 47 C.F.R. § 87.475(d) (The frequencies available for assignment to ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz.).

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900009 (Enf. Bur., Western Region, Los Angeles Office, released May 23, 2007) ("*NAL*").

⁸ 47 U.S.C. § 312(f)(1).

⁹ See 47 C.F.R. § 87.197 (ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load).

and then proceeded to test another ELT, which created emissions on 406 MHz again, in an unshielded environment, a few days later.¹⁰ The Region also determined that AMERI-KING's violations were repeated, pursuant to Section 312(f)(2) of the Act,¹¹ because AMERI-KING tested ELTs, which created emissions on 406 MHz in unshielded environments on two days, December 26, 2006, and December 28, 2006.¹² Because AMERI-KING had no license to operate on 406 MHz, the Region concluded that AMERI-KING repeatedly violated Section 301 of the Act.¹³ The Region also found that AMERI-KING's efforts to ensure compliance with the Rules, by ceasing testing of the two ELTs after the warnings from the Los Angeles agent, did not justify a downward adjustment because the Commission has determined that it expects the entities it regulates to correct errors when they are brought to the regulated entity's attention.¹⁴ Finally, the Region determined that AMERI-KING had a history of compliance with the Commission's Rules, and reduced the forfeiture amount to \$8,000.¹⁵

8. On March 24, 2008, AMERI-KING filed a petition for reconsideration of the *Forfeiture Order*, which reiterated all of the arguments which were addressed by the Region in the *Forfeiture Order*. The Bureau reviewed the petition for reconsideration and the entire record, and found no material error or omission in the *Forfeiture Order*.¹⁶ The Bureau noted that AMERI-KING re-asserted that it did not willfully or repeatedly violate Section 301 because it utilized an approved test protocol for each of the tests it conducted at each of the two test facilities, so the transmissions were not real distress message codes.¹⁷ The Bureau determined that the fact that AMERI-KING may have used an approved test protocol did not alter the underlying finding of the Region that AMERI-KING twice tested transmissions using unregistered equipment in an unshielded environment, in violation of the Commission's Rules, which

¹⁰ *Forfeiture Order*, 23 FCC Rcd at 2618.

¹¹ 47 U.S.C. § 312(f)(2).

¹² *Forfeiture Order*, 23 FCC Rcd at 2618 – 2619.

¹³ In its *Response* to the *NAL*, AMERI-KING also argued that it confirmed with the Commission's Office of Engineering and Technology ("OET") that it did not need to obtain an experimental license to upgrade its ELTs to 406 MHz. The Region noted that OET, in its correspondence, also informed AMERI-KING that "ELTs are regulated . . . and are required to be tested under the FCC's equipment verification procedure . . . and be certified by a recognized COSPAS/SARSAT test facility. All tests done prior to certification must be done in an RF-shielded enclosure and into dummy loads (87/197)." *Forfeiture Order*, 23 FCC Rcd at 2619 n.18.

¹⁴ *Forfeiture Order*, 23 FCC Rcd at 2619. See *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁵ *Forfeiture Order*, 23 FCC Rcd at 2619.

¹⁶ *2008 Memorandum Opinion and Order*, 23 FCC Rcd at 9916 - 9919. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy, or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. 47 U.S.C. § 301. Section 3(33) of the Act defines "communications by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission." 47 U.S.C. § 153(33). Section 87.473(b) of the Commission's Rules requires that "[l]icenses for ELT test stations will be granted only to applicants to train personnel in the operation and location of ELTs, or for testing related to the manufacturer or design of ELTs." 47 C.F.R. § 87.473(b). Section 87.475(d) of the Rules states the frequencies available for ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz and also states that ELT test station licensees must "[n]ot cause harmful interference to voice communications on these frequencies or any harmonically related frequency," and must "[c]oordinate with the appropriate FAA Regional Spectrum Management Office prior to the activation of each transmitter." 47 C.F.R. § 87.475(d). See *Forfeiture Order*, 23 FCC Rcd at 2617 – 2618.

¹⁷ *2008 Memorandum Opinion and Order*, 23 FCC Rcd at 9918.

created, however inadvertently, unauthorized emissions on the 406 MHz distress search and rescue frequency, and which were reported to the FCC as interference to the COSPAS/SARSAT system. The Bureau therefore affirmed the Region's determination that AMERI-KING willfully and repeatedly violated Section 301 of the Act by operating radio transmitters on 406 MHz without authorization.¹⁸ The Bureau also affirmed the Region's findings that AMERI-KING's subsequent efforts to ensure compliance with the Commission's Rules, after the warnings from the Los Angeles agent, did not warrant a downward adjustment of the forfeiture, but that its previous history of compliance with the Commission's rules did warrant a reduction of the forfeiture from \$10,000 to \$8,000.¹⁹

III. DISCUSSION

9. Section 405(a) of the Act²⁰ and Section 1.106(f) of the Rules²¹ provide that a petition for reconsideration be filed within thirty days from the date of public notice of the final action. In this case, public notice of the *2008 Memorandum Opinion and Order* occurred on June 24, 2008, upon its release.²² The thirtieth day after June 24, 2008, was July 24, 2008.²³ Thus to have been timely, any request for reconsideration was due to be filed with the Commission no later than July 24, 2008.²⁴ AMERI-KING's submission was received by the Commission on July 25, 2008. Accordingly, we find that AMERI-KING did not timely file its petition for reconsideration and that dismissal is warranted.²⁵

10. We further find that even if AMERI-KING had timely filed its *Petition*, the *Petition* would fail on the merits. We have reviewed AMERI-KING's most recent *Petition* and we find that it again reiterates arguments it raised in its *Response* to the *Forfeiture Order* and in its initial petition for reconsideration. All of these arguments have been previously considered in the *Forfeiture Order* and the *2008 Memorandum Opinion and Order*. Therefore, we find that AMERI-KING's *Petition* provides no basis which warrants reduction or cancellation of the monetary forfeiture assessed against AMERI-KING, even if its *Petition* had had been timely filed.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), 405 of the Act²⁶ and Section 1.106 of the Rules,²⁷ that the Petition for Reconsideration filed by AMERI-KING Corporation, **IS DISMISSED**, and the Bureau's *2008 Memorandum Opinion and Order* **IS AFFIRMED**.

¹⁸ *2008 Memorandum Opinion and Order*, 23 FCC Rcd at 9919.

¹⁹ *2008 Memorandum Opinion and Order*, 23 FCC Rcd at 9919.

²⁰ 47 U.S.C. § 405(a).

²¹ 47 C.F.R. § 1.106(f).

²² *See* 47 C.F.R. § 1.4(b).

²³ *See* 47 C.F.R. § 1.4(j).

²⁴ *See* 47 C.F.R. §§ 1.106(f), 1.4(j).

²⁵ *See Washington Broadcast Management Co., Inc.*, 15 FCC Rcd 6607 (2000); *Bay Broadcasting Corporation*, 15 FCC Rcd 23449 (EB 2000).

²⁶ 47 U.S.C. §§ 154(i), 154(j), 405.

²⁷ 47 C.F.R. § 1.106.

12. Payment of the forfeitures ordered by the Region and the Bureau affirmed by this *Memorandum Opinion and Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. AMERI-KING Corporation shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

13. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to AMERI-KING Corporation, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Deputy Chief, Enforcement Bureau

²⁸ 47 U.S.C. § 504(a).